

To: Chairman Kesto and Members of the Law and Justice Committee
From: Allan Wachendorfer, Policy Director, NASW-Michigan
Subject: Mandatory Reporting – SB 873, 874, 880, HB 5659, 5796
Date: May 1, 2018

The National Association of Social Workers – Michigan Chapter (NASW) is a membership organization of professional social workers working in various critical health and human service settings, including child welfare, schools, behavioral health, and domestic and sexual violence victim services. NASW supports policies that improve the health, safety, and well-being of all members of society – particularly the most vulnerable. There are more than 24,000 licensed social workers in Michigan. NASW sets the standards for the profession, including the Code of Ethics, and provides professional development through trainings, certificate programs, and continuing education.

NASW strongly supports policies to prevent or stop child sexual and physical abuse. We also agree that recent events shed light on systemic and individual failures at multiple levels in protecting against this kind of abuse and it is imperative that we seek changes that will help prevent future occurrences of abuse. NASW appreciates and supports the legislatures attempt to address those failures. However, some aspects of the changes to the mandatory reporting laws raise concerns among our members. We would like to offer some suggestions to strengthen these bills so that they begin to address what they are intended to.

HB 5659 and SB 873 – Mandated Reporters

What are mandated reporters required to report?

It is worth pointing out that mandated reporters are only required to report abuse or neglect as it is defined by the law. Abuse or neglect is defined as harm or threatened harm to a child's health or welfare by a parent, a legal guardian, any other person responsible for the child's health or welfare, or by a teacher, a teacher's aide, or a member of the clergy.

A person responsible for a child's health or welfare is any of the following:

- A parent, legal guardian, or person 18 years of age or older who resides for any length of time in the same house in which the child resides.
- A nonparent adult. A nonparent adult is a person 18 years of age or older and who, regardless of the person's domicile, meets all of the following criteria in relation to the child:
 - Has substantial and regular contact with the child;
 - Has a close personal relationship with the child's parent or with another person responsible for the child's health or welfare; and
 - Is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree (parent, grandparent, great-grandparent, brother, sister, aunt, uncle, great aunt, great uncle, niece, nephew).
- A nonparent adult who resides in any home where a child is receiving respite care. Note: This includes nonparent adults residing with a child when the complaint involves sexual exploitation (human trafficking).
- An owner, operator, volunteer, or employee of one or more of the following:
 - A licensed or registered child care organization.
 - A licensed or unlicensed adult foster care family home or adult foster care small group home.
 - Child care organization or institutional setting.

Mandated reporters are not legally obligated to report harm perpetrated by anyone who doesn't fit this definition. If the intent of this bill is to expand the number of mandated reporters to ensure the reporting of abuse perpetrated by coaches, doctors, and other non-caretaking adults, this bill does not, nor does the Child Protection Law itself, accomplish that. The Child

Protection Law is designed to protect children from harm or threatened harm that violates the safety of their home environment. For good reason – confidentiality – mandatory reporter laws only apply to this type of abuse and neglect.

We recognize that not all mandated reporters work in therapeutic settings. However, from the point of view of social workers, clients have a legally and ethically protected right to confidentiality. Mandatory reporting legally mandates this confidentiality be set aside in cases where the safety of the client is threatened in their home – where everyone should feel the safest. However, it is critical that we consider this therapeutic relationship when changing laws surrounding mandatory reporting.

One might assume that it should be okay to set aside confidentiality in cases where abuse or neglect is perpetrated by someone other than a parent or person responsible for the health or welfare of the child. However, this assumption is incorrect. In such a case, a clinician and their client should discuss what options exist to report, what the process may look like for them, and work with them to help them be willing to report. Priority should be given to maintaining the trust established between the clinician and client and allowing a safe space to exist where their experience can be affirmed and navigated rather than scared away, never to seek help again.

However, we understand that when a person is receiving services from a licensed medical professional, an extremely high level of safety should be expected. Therefore, NASW would not oppose licensed medical professionals being added to the list of people who are “responsible for the health or welfare of a child” under the definition of abuse; the law was previously amended to add abuse by teachers, teachers’ aids, and clergy. This option would be unlikely to cause unintended consequences and provides a way to mandate reporting of abuses like those this legislation is trying to address, while at the same time maintaining the confidentiality and therapeutic trust between clients and clinicians.

Expanding List of Mandated Reporters - Who does the reporting?

NASW is not opposed to expanding the list of mandated reporters when they are professionals in positions where abuse is likely to be discovered. Physical therapists and paid professional coaches could be in positions to hear or see issues that should be reported. We fully support the enhancement of training for all mandated reporters that begins to be addressed in HB 5796.

NASW is opposed to including unpaid volunteer coaches and others as mandated reporters. Increasing the number of reports from nonspecialized individuals can lead to unintended consequences. States’ who responded to Jerry Sandusky’s abuse by creating “universal” mandated reporter laws have seen an increase in volume of reports yet decreases in rates of physical and sexual abuse reports. The increases deplete limited resources for investigations that are vital to help the children who need it most. Additionally, families with low incomes may be reported for neglect stemming from poverty, but rather than stepping in with services we potentially hurt them by creating a fear to seek help or causing undo trauma during the investigation process. (Raz, 2017 & Vandervort, et al, 2016)ⁱⁱⁱ

Suggestions:

- The MDHHS is already required by the Child Protection Law to make training available. We recommend funding be provided to ensure all mandated reporters are made aware of and can receive the training in-person or online.
- CPS has historically experienced high caseloads. This problem could increase if an influx of reporting occurs. We recommend funding to increase CPS central intake and investigation staffing with licensed social workers.

SB 874 & 880 – Enhanced Penalties for Failure to Report

SB 874 would expand penalties for failure to report. Current law stipulates the penalty is a misdemeanor with maximum 93 days in jail and/or \$500 fine. SB 874 & 880 would increase the penalty for all mandated reporters, except for volunteers, to a felony charge with up to 2 years in prison and/or \$1,000-\$5,000 fine. Volunteers would face a misdemeanor with up to 1 year in jail and/or \$1,000 fine.

Since 1990, charges for failure to report have been filed only 69 times. Of those, only 17 led to a conviction (Jones, 2018).ⁱⁱⁱ The low numbers suggest that failures to report are rare. Additionally, evidence suggests that increasing penalties does not have a significant impact on deterring crime and is often counterproductive^{iv}. What is more effective as a deterrent is the “certainty” of getting caught^v – which would be bolstered by better training. Therefore, resources for enforcement and penalties are better directed toward the abuser than the potential reporter.

It is NASW-Michigan’s position that any issues with underreporting is better addressed through public education and professional training rather than a criminal justice approach.

Acknowledgement of Child Sexual Abuse & Exploitation as a Public Health Problem

The National Plan to Prevent the Sexual Abuse and Exploitation of Children promotes “awareness that the perpetration of child sexual abuse and exploitation is the result of a combination of individual, relationship, community and societal factors—all of which need to be addressed to effectively prevent child sexual abuse and exploitation. A public health model addresses all these factors and involves identifying the risks and protective factors related to victimization and perpetration, as well as discovering evidence-based intervention strategies to help those who have been abused, those who have perpetrated sexual abuse and both the victim’s and perpetrator’s families and communities (Centers for Disease Control and Prevention [CDC], 2004). As a public health problem, child sexual abuse and exploitation is not a problem that can, or should, be addressed only through the criminal justice sanctions or social services intervention after an offense has happened.”^{vi}

In accordance with Erin’s Law (PA 593’12) Governor Snyder created a Task Force to make recommendations for reducing child sexual abuse in Michigan and developing school policies that address the sexual abuse of children. A report was submitted to the legislature on June 17, 2015.^{vii}

NASW-Michigan supports the recommendations outlined in these reports, with a particular emphasis on policies that acknowledge child sexual abuse as a public health problem, and urges the legislature to enact those policies that have not yet been implemented – particularly the following:

- Community Based Child Sexual Abuse Prevention Education
- Improved Protocols for All Youth-Serving Organizations
- Interventions and Services, Including Mental Health Services
- Training for Justice Systems and Related Systems Responders

ⁱ Raz M. Unintended Consequences of Expanded Mandatory Reporting Laws. *Pediatrics*. 2017;139(2):e20163511

ⁱⁱ Palusci, V. J., Vandervort, F. E., & Lewis, J. M. (2016). Does changing mandated reporting laws improve child maltreatment reporting in large U.S. counties? *Children and Youth Services Review*, 66, 170-179. doi:10.1016/j.chldyouth.2016.05.002

ⁱⁱⁱ Jones, R. (2018, February 09). In Michigan, few prosecuted for failing to report child abuse. Retrieved from <https://www.wxyz.com/news/local-news/investigations/in-michigan-few-prosecuted-for-failing-to-report-child-abuse>

^{iv} Five Things About Deterrence. (n.d.). Retrieved from <https://nij.gov/five-things/pages/deterrence.aspx>

^v Wright, V., Ph.D. (2010, November). Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment (Rep.). Retrieved April 29, 2018, from The Sentencing Project website: <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>

^{vi} National Plan to Prevent the Sexual Abuse and Exploitation of Children (Rep.). (2012, March). Retrieved April 29, 2018, from: <http://www.preventtogether.org/Resources/Documents/NationalPlan2012FINAL.pdf>

^{vii} Report of the Michigan Task Force on the Prevention of Sexual Abuse of Children (Rep.). (2015, June). Retrieved April 29, 2018, from State of Michigan website: https://www.michigan.gov/documents/dhs/ReportRecommendations_491970_7.pdf

